IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.1095-SB OF 1999

DATE OF DECISION: AUGUST 01, 2007

Kulwant Singh and others

.....Appellants

VERSUS

State of Punjab.

....Respondent

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. T.P.S.Tung, Advocate,
for appellant No.1.

Mr. Pawan Kumar, Advocate for
Mr. D. D. Sharma, Advocate,
for appellant Nos.2 and 3.

Mr. Shitesh Gupta, DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Upon being convicted for an offence under Section 304 Part I IPC, the appellants were sentenced to suffer RI for 10 years and to pay a fine of Rs.2000/- each. Two of the appellants, namely, Gurdip Singh and Amar Singh, have been convicted with the aid of Section 34 IPC. In addition, the appellants are also convicted and sentenced to undergo RI for 4 years and 2 years respectively for offences under Sections 326 and 324 IPC with fine of Rs.500/- each u/s 326 IPC. In default of payment of fine, the defaulter shall further

undergo RI for three months. They have filed the present appeal, impugning their conviction and the award of sentences.

FIR under Sections 302, 326, 324, 323, 148, 149 IPC was registered against the appellants and other co-accused on a statement made by one Gurcharan Singh before Inspector Chand Singh on 7.10.1990. As per the complainant, at about 9/10 P.M. on 7.10.1990, he and his brother Bhagwan Singh were proceeding from his house to the Dera of his brother. As they reached guava trees planted near the Dera of Kulwant Singh, the appellants came there armed with Gandasis. Appellant Kulwant Singh raised lalkara, saying that the complainant be not allowed to go. Nephew of complainant, Sohan Singh and his sister-in-law Joginder Kaur, got attracted to the scene when the complainant raised alarm. Appellant Kulwant Singh allegedly gave two gandasi blows on the head of Bhagwan Singh. Baj Singh gave three gandasi blows from the sharp side again on the head of Bhagwan Singh. Thereupon, Bhagwan Singh fell down on the ground, when Gurdip Singh gave a gandasi blow from the sharp side on his back. Buta Singh and Amar Singh also inflicted injuries with their gandasis on the person of Bhagwan Singh. Allegation further is that when complainant, Gurcharan Singh, came forward to rescue his brother, appellant Kulwant Singh gave three gandasi blows on his head, cheek and nose. Baj Singh, appellant, as well is alleged to have given four blows with gandasi from the sharp side to the complainant. These blows hit on his nose and fingers of his right hand as he raised the same to save himself. Gurdip Singh, Buta Singh and Amar Singh caused injuries to the complainant with their respective gandasis from the blunt side, which hit him on his

back, right thigh and left arm. As per the allegations, Sohan Singh and Joginder Kaur pleaded with the appellants not to beat the complainant and his brother. Having caused injuries, the appellants ran away from the scene with their respective weapons. It is also disclosed that the complainant had caused minor injuries to Jaswant Kaur wife of Kulwant Singh while they were in the process of defending themselves. Sohan Singh, nephew of the complainant, raised alarm while going to the village and thus, Piara Singh son of Shangara Singh and many other people got attracted to the scene. A tractor was brought and the injured were removed to Civil Hospital, Samana. Bhagwan Singh, brother of the complainant, succumbed to his injuries in the hospital. The motive behind the fight is stated to be a dispute arising on account of the boundary wall and straying of cattle from one field to another belonging to complainant and the appellant. There had been exchange of hot words many times prior to the occurrence and the parties had faced security proceedings also.

On completion of investigation, challan was presented and the appellants were charged with Sections as afore-mentioned including Section 302 IPC. The prosecution examined 11 witnesses in support of its case.

The appellants when confronted with the evidence and the material on record, pleaded innocence. Appellant Kulwant Singh stated that he and his `Siri' Amar Singh were attacked when they were working in the field and other appellants/persons named in the FIR were not present at that time. According to appellant Kulwant Singh, the complainant had caused injuries to him and his wife.

Appellant Baj Singh, Gurdip Singh and Amar Singh, including their co-accused Buta Singh (since acquitted), in their separate statements brought out that they were not present at the time of occurrence and hence pleaded their false implication. Appellant Kulwant Singh appeared as a witness in his defence besides examining Dr.Satish Arora and Constable Dharam Pal as DW2 and DW3 respectively. Buta Singh accused was acquitted whereas the present appellants were convicted for the offences under Section 304 Part I IPC and under Sections 326 and 324 IPC and sentenced as already noticed.

Mr.T.P.S.Tung, Advocate, appearing for appellant No.1, submits that appellant Amar Singh is no more and hence appeal qua him would abate. Attacking the findings returned by the trial Court, the counsel submits that both the eye witnesses, Gurcharan Singh, complainant and Joginder Kaur, (PW3) are closely related to the deceased and hence, highly interested witnesses. They both had attempted to change the place of occurrence so as to show that the appellants had attacked the complainant. The counsel points to the serious flaws in the investigation and gaping holes in the case of the prosecution by referring to the evidence of the Investigating Officer. He has also referred to some serious contradictions in the version of both the eye witnesses to say that the prosecution has not proved the case against the appellants beyond the shadow of reasonable doubt. The counsel also submits that role attributed to Gurdip Singh and Buta Singh is identical and as such, Gurdip Singh, like Buta Singh, was required to be acquitted. As per the counsel, Gurdip Singh is attributed injuries to deceased on the back and the reasons

for acquitting Buta Singh, as given by the Court, would equally apply to the case of Gurdip Singh. In the alternative, Mr.Tung has prayed that considering the evidence on record, even the offence under Section 304 Part I IPC would not be made out and at the most, it may reveal a commission of offence under Section 304 Part II IPC.

I have deeply considered the pleas raised before me.

A perusal of the evidence would show that the case of Gurdip Singh and Buta Singh can not be equated. The major difference that can be noticed is that weapon of offence used by Gurdip Singh was recovered on the basis of a disclosure statement made by him, which is admissible in law whereas alleged weapon of offence used by Buta Singh was neither recovered nor there was any disclosure statement attributed to him. There is, however, some substance in the submission made by counsel for the appellants that investigation in this case suffers from some serious infirmities. The Investigating Officer (PW7) in this case apparently has not acquitted himself well. PW-7 first stated in his evidence that the dead body was lying near the heap of paddy in the field but again said that the same was seen by him lying in the mortuary of the hospital. PW7 had recorded the statements of Jaswant Kaur and Kulwant Singh in the hospital and thereafter had inspected the spot. It is on record that deceased Bhagwan Singh had been shifted to hospital and in this background the evidence of Investigating Officer (PW7) that he saw the body in the field is obviously false. In fact, the I.O. had to be declared hostile and was cross-examined by the Public Prosecutor. While under cross-examination by the Public Prosecutor, the I.O. initially maintained that he had interrogated Kulwant Singh on

1.11.1999 but ultimately had to concede that as a matter of fact the accused was not interrogated by him nor was any recovery effected in his presence. So much so that PW7 had to concede that he was wrongly prompted to state about the arrest of Kulwant Singh by him and that in fact appellant Kulwant Singh was arrested by Inspector Karnail Singh. By referring to the statement of PW7, Mr.Tung has urged that scene of occurrence was changed. PW-7 (I.O.) can not be given any credence seeing the manner he has conducted investigation and has given evidence. The case otherwise is supported by an eye witness account given by two witnesses. It can not be disputed that complainant Gurcharan Singh and Jaswant Singh were injured in the incident. Their testimony lends sufficient assurance to the core of the case of the prosecution notwithstanding some discrepancies in their statements here and there. It can be safely said that the incident, as such, did take place. The question to be seen is if the evidence would establish the case of prosecution or not. While analyzing the evidence, the trial Court appears to have completely ignored the defence evidence. This, according to appellants' counsel, is a serious infirmity. The counsel is justified in saying so and the effect of this glaring omission is required to be seen. A perusal of the judgment would show that it does not contain any reference to the defence evidence. As already noticed, one of the appellants had taken risk to appear as a witness in his defence and submit himself to the searching cross-examination by the opposite side. The defence has also produced a doctor in support of its case. The evidence of Dr.Satish Arora (DW2) would show that appellant Kulwant Singh had received 6 injuries, 5 out of which were

advised x-ray. One of the injury was found to have been caused by sharp weapon whereas the remaining were caused with blunt weapon. DW2 had also medically examined Jaswant Kaur, wife of Kulwant Singh (appellant) and found that she had suffered 7 injuries on her person. Constable Dharampal had appeared as DW3 to place on record the copy of DDR No.14 dated 7.10.1990. There is not even a whisper about defence evidence in the entire judgment of the trial Court. It would have been a different matter if the trial Court was to discard the defence case as projected but the Court could not have totally ignored the defence version, when it was supported by the evidence given on oath. Non-considering of this evidence would indicate non-application of mind by the trial Court. It may require consideration at this stage in view of the fact that it would not be fair at this belated stage to remand the case back for re-consideration. In fact, it would not be in the interest of justice to send the case to trial Court for re-consideration by taking into account the defence evidence as the appellants have already suffered this prosecution for a prolonged period of over 17 years. The incident is of year 1990 vintage. The appellants faced trial for 9 years and were convicted on 25.10.1999. They have undergone RI for terms varying from 3 to 4 years. I would, as such, refrain from sending the case to trial Court for re-consideration due to this noticeable irregularity and infirmity. This irregularity would appear curable by giving due consideration to the defence evidence at this stage and to give benefit, if any, due to the defence on that count.

Let us see the nature of defence evidence led in the case. Kulwant Singh, while appearing as DW1, has brought out that late

Bhagwan Singh and Gurcharan Singh, while armed with gandasas alongwith Sohan Singh and Nishawar Singh had over-powered him. As per DW1 Bhagwan Singh gave a gandasi blow on his fore-head and even his wife, Jaswant Kaur and Amar Singh, who reached the spot, were not spared. As per his evidence, Bhagwan Singh had given one gandasi blow on the head of his wife, Jaswant Kaur. Similar allegation is made against Gurcharan Singh for having given a gandasi blow on the head of the wife of DW-1 (appellant Kulwant Singh). DW-1 (Kulwant Singh) further brought out that he gave gandasi blows in his self defence to Bhagwan Singh and Gurcharan Singh. Since said appellant had appeared as witness, he was confronted with DDR No.14 dated 7.10.1990 allegedly recorded at his instance where some of the portion so stated by him before the Court was not found recorded. The version of DW-1 that Bhagwan Singh, Gurcharan Singh, Nishawar Singh and Sohan Singh gave gandasi injuries to him and his wife was not found recorded in Ex.PE. DW-1 even did not stick to his stand in his examination-in-chief that he had caused injuries to Bhagwan Singh and Gurcharan Singh in his self defence. It is, thus, seen that DW-1, Kulwant Singh, did not conduct himself with credit as a witness in his own defence. DW-1 has conceded that he gave blows with gandasi to late Bhagwan Singh and complainant Gurcharan Singh though in self defence, from which he later wanted to resile. Once an accused exercises his option to depose as a witness, he waives his right as an accused and subjects himself to same rules applicable to other witnesses. The evidence given by an accused appearing as defence witness can be used against him as well. Having regard to the nature of

injuries found on the body of Bhagwan Singh and complainant Gurcharan Singh, it can not be expected that these injuries were caused by one person alone and that too in self defence. The fact also can not be ignored that even the complainant party was armed with weapons when this incident took place and the prosecution has not been able to fully explain the injuries to the appellants and the wife of DW-1, Jaswant Kaur. She had suffered as many as 7 injuries. The court would, thus, be called upon to perform the onerous task of separating chaff from the grain. The Courts are required to make an attempt to separate truth from the falsehood. It is not a case where truth and falsehood are so intermingled that it is impossible to separate them or that entire evidence is to be rejected. Two of witnesses are injured witnesses and have given evidence of the ocular version. This evidence must carry a great value. Ocular version of the incident given by injured witness in the same incident is of a great value as held in ***Ramaswami Ayyangar and others Vs. State of Tamil Nadu,*** AIR 1976 SC 2027. It has been generally noticed by the Courts in this country that the maxim of falsus in uno, falsus in omnibus is not to be invoked in our courts where witnesses seldom tell the whole truth but often resort to exaggerations embellishment and padding to support a story, however, true in the main. It is in this background that function of the Court comes into play to disengage the truth from falsehood and to accept what it finds to be true and reject the rest. It is only when the truth and falsehood are inextricably mixed up, polluting beyond refinement the entire fabric of narration given by the witness that the Court might be justified in rejecting the evidence in toto. (See ***Bhagwan Tana Patil***

Vs. The State of Maharashtra, AIR 1974 Supreme Court 21).

The nature of injuries caused on the body of the deceased, complainant and the wife of the deceased would show that it can not be a work of one hand. Otherwise also, the injured eye witnesses have lend sufficient support to the case of the prosecution. There were as many as 11 injuries on the body of deceased and 10 injuries on the body of complainant. PW3 had also received injuries on her body. Similarly, the doctors also found injuries on the person of appellant, Kulwant Singh and his wife. The prosecution did try to explain said injuries through complainant, Gurcharan Singh, who stated that these were caused in self defence. Having regard to the nature of this evidence, this appears to be a case where both the parties have caused injuries to each other. Apparently, there was no intention on the part of the appellants to cause death. Of course, the manner in which the weapons were used and the injuries that have been caused, would clearly indicate that the appellants had knowledge that their act was likely to cause death but without any intention to cause death or with intention to cause such bodily injuries as was likely to cause death. In my view, Section 304 Part II is more appropriately attracted in the facts and circumstances of this case. The appellants can not be attributed aim to cause death or intention to cause such bodily injuries as was likely to cause death but they certainly can be attributed with the knowledge that they were likely to cause death. In ***Kanwarjeet Singh Vs. State of Punjab,*** 1992 Cri.L.J. 3781, the conviction was altered to Section 304 Part II, when evidence showed that the accused had inflicted a knife blow, which alongwith the injury caused by another accused proved fatal but he

also sustained injuries.

Accordingly, the present appeal is partly allowed. The conviction of the appellants recorded under Section 304 Part I is altered to an offence under Section 304 Part II. The conviction of the appellants under Sections 326 and 324 IPC is maintained. Appellants, Kulwant Singh and Baj Singh, by now, have undergone sentence of 4 years RI whereas appellant Gurdip Singh has suffered a sentence of 3 years RI. They were sentenced to suffer RI for 4 years and 2 years under Sections 326 and 324 IPC respectively. The sentence awarded to the appellants is reduced to the period already undergone, considering the fact that they have suffered this prolonged trial and prosecution. Since appellant Amar Singh has died during the pendency of the proceedings, appeal qua him shall abate.

August 01, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**